IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Crl.MC.No. 3198 of 2007()

CC.802/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR
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PETITIONER:

MR. RAJESH GOPAL,
MANAGING PARTNER, ESSAR TRADES AND EXPORTS,
1/482, RIVER ROAD, COCHIN - 692 001.

BY ADV. SMT.C.S.SHEEJA

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. ABDUL RASHEED,
MANAGING PARTNER, GLOBAL TRADE LINKS,
ROOM NO. 20/117, EZHUR ROAD, TIRUR - 676 101.

3. MRS. SARITHA SHIJU,
PARTNER, ESSAR TRADES AND EXPORTS,
1/482, RIVER ROAD, COCHIN - 692 001.

4. MR. SHIJU SUDEVAN,
POWER OF ATTORNEY HOLDER OF MRS. SARITHA SHIJU,
ESSAR TRADES AND EXPORTS,
1/482, RIVER ROAD, COCHIN - 692 001.

5. M/S. ESSAR TRADES AND EXPORTS,
1/482, RIVER ROAD, COCHIN - 692 001.

BY ADV. SRI. JIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. Nos. 3196 & 3198 Of 2007

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Dated this the 17th day of October, 2007

ORDER

The petitioner was arrayed as 1st accused in two separate prosecutions both under Section 138 of the Negotiable Instrument Act. The petitioner and the complainant settled the disputes and filed applications for composition. Applications for composition were accepted and the petitioner was acquitted. The petitioner has thus secured a deemed acquittal under Section 320 (8) Cr.P.C. The case against the co-accused against whom the case was not settled is continuing.

2. The petitioner now surprisingly and unfortunately finds warrants of arrest issued by the learned Magistrate in those two cases chasing him. According to the petitioner this is most unjustified . The petitioner having already been acquitted, there can be no question of any warrants of arrest being issued against the petitioner. Even if it be that warrant of arrest is being issued to procure the presence of the representative of the firm- 4th respondent, the petitioner is not the one who represents

that firm and at any rate, warrant of arrest cannot be issued against the person who has already been acquitted. The petitioner has thus rushed to this Court with these petitions. But why does not the petitioner through counsel appear before the learned Magistrate and bring to the notice of the learned Magistrate that this is apparent and obvious error committed by the learned Magistrate. Why should the petitioner have rushed to this Court?

3. The learned counsel for the petitioner submits that warrant of arrest is chasing the petitioner and in his anxiety to avoid consequences of execution of such warrants, the petitioner has come to this Court.

4. I am satisfied that this petition can now be allowed in part with appropriate observations/directions. The following directions are hence issued:

i) The petitioner can appear before the learned Magistrate through counsel and bring to the notice of the learned Magistrate that warrants of arrest are being issued against the petitioner

allegedly because of an error/ inadvertance.

ii) The learned Magistrate must consider such request without insisting on the personal presence of the petitioner and pass appropriate orders. All relevant facts must be adverted and a decision taken by the learned Magistrate. I

iii) The warrants of arrest issued against the petitioner in these two cases shall not be executed till 31.10.07, within which time the petitioner must appear before the learned Magistrate through his counsel and make the necessary application. If such applications are filed, warrants of arrest shall not be executed till the same are disposed of.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE